

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

Crl.Rev.Pet.No. 1203 of 2003 ()

AGAINST THE JUDGMENT IN CRL.A 565/2001 of III ADDITIONAL SESSIONS
COURT, THRISSUR DATED 19-03-2003

AGAINST THE JUDGMENT IN CC 235/2000 of J.M.F.C.-II, THRISSUR
DATED 08-11-2001

PETITIONER/REVISION PETITIONER :

PRINCE @ JINS, S/O. SURYAN VEETIL RAJAN,
KOLAZHY VILLAGE DESOM, THRISSUR DISTRICT.

BY ADV. SRI.U.O.JOSE

RESPONDENT/RESPONDENT:

SUB INSPECTOR OF POLICE,
ANTHIKKAD, THRISSUR DISTRICT
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY P.P.SRI. V.H.JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
18-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1203 of 2003
.....

Dated this the 18th day of February, 2015.

O R D E R

The accused in C.C.No.235/2000 on the file of the Judicial First Class Magistrate Court-II, Thrissur is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Anthikad in Crime No.50/2000 of that police station under sections 457 and 380 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that in the night of 20.2.2000 the revision petitioner had committed theft of cigarette bundles after break open the door of the shop belonging to PW2 Rappai at Kanjany and thereby he had committed the above said offences.

4. After investigation, final report was filed and the case was taken on file as C.C.No.235/2000. When the revision petitioner appeared before the court below, after hearing both sides charge under sections 457 and 380 of the Indian Penal Code were framed and the same was read over and explained to

him and he pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 6 were examined and Exts.P1 to P3 and P1(a) and MO1 were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that he had not committed any offence and he has been falsely implicated in the case.

5. After considering the evidence on record, the court below found the revision petitioner not guilty under section 457 and 380 of the Indian Penal Code, but found him guilty under section 411 of the Indian Penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and set off was allowed for the period of detention already undergone by him.

6. Aggrieved by the same, he filed Crl.A.No.565/2001 before the Sessions Court, Thrissur which was made over to the Third Additional Sessions Court, Thrissur for disposal and the learned Additional Sessions Judge dismissed the appeal by the impugned judgment confirming the order of conviction

and sentence imposed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

7. Heard the learned Public Prosecutor and perused the records.

8. The learned Public Prosecutor supported the concurrent findings of the courts below.

9. The case of the prosecution as emerged from the prosecution witnesses was as follows:

PW2 was conducting a shop at Kanjany and he closed the shop on 19.2.2000 at 8 p.m and on 21.2.2000 morning, his employee informed him that the shop was broke open and he went to the shop and found that the tiles on the back portion of the roof were removed and wooden planks and shouters were also removed and cigarette packets worth Rs.25,000/- were found stolen and he immediately informed his son PW1. He also came to the shop and thereafter they went to the police station and gave Ext.P1 statement on the same day which was recorded by PW6 and registered Ext.P1(a) First Information Report as Crime No.50/2000 against unknown person under sections 457 and 380 of the Indian Penal Code. On 9.3.2000

at about 7.30 p.m while PW5, then Circle Inspector of Police, Thrissur, was doing on patrol duty, he found the revision petitioner with another at Thekkinkadu Maidhanam and on getting suspicion about their conduct, they stopped them and examined MO1 bag in the revision petitioner's hand, which contained a tape recorder and he was not able to give any explanation regarding the same. So, PW5 arrested him and seized the bag as per the mahazer and came to the police station and registered Crime No.149/2000 under sections 41 (1)(d) and 102 of the Code of Criminal Procedure. When he questioned the revision petitioner, it was revealed that he had committed the offence in Crime No.50/2000 of Anthikad police station. On the basis of the statement given by the revision petitioner namely "I have placed the cigarette bundles in room No.39, Cylon Lodge, Achingal Lane, Thrissur and I will show the lodge and the cigarette bundles" PW5 went to Cylon lodge along with the revision petitioner and as shown by the revision petitioner from Room No.39 of that lodge, he had seized the cigarette bundles kept in a gunny bag as per Ext.P3 mahazer and thereafter the records were transmitted to the Sub Inspector of Police, Anthikad police station. The Sub

Inspector of Police conducted investigation and got it identified by PW2 and submitted final report.

10. PW4 was examined to prove that he was conducting sale of cigarettes and the revision petitioner try to sell cigarettes for him. It is true that Pws 1 and 2 have deposed about the theft committed in the shop and there is nothing to disbelieve their evidence regarding this aspect. It is true that they could not identify the revision petitioner as the person who committed the crime. But their evidence is sufficient to prove that theft was committed from the shop of PW2 and immediately on knowing about the theft, Ext.P1 statement was given by PW2 and on the basis of Ext.P1(a), a crime was registered.

11. The evidence of PW5 will go to show that when he arrested the revision petitioner it was revealed that he had committed the offence in this case and on the basis of the statement given, the articles were seized as per Ext.P3 mahazer in the presence of witnesses, but those witnesses were not examined. But that alone is not sufficient to come to the conclusion that the seizure has not been proved. In the decision reported in **State Govt. of NCT of Delhi v. Sunil &**

others (2001 Crl.LJ 504), it has been observed that merely because independent witnesses have not supported or they were not examined is not a ground to disbelieve the case of seizure, if the court is satisfied with the evidence given by the seizing officer. The same view was reiterated in the decision reported in **Modan Singh v. State of Rajasthan** (1978 Crl.L.J 1531). Further, the revision petitioner had no explanation as to how he came in possession of these articles. Once it was proved by the prosecution that he was in possession of the articles which were stolen articles and unless the possession of the same is not explained or accounted by the accused, then it can be presumed that he is either a thief or responsible for the stolen articles in view of the presumption.

12. Further, the conduct of the revision petitioner showing the place of where the stolen articles were kept is admissible under section 8 of the Evidence Act and this was so held in the decision reported in **George v. State of Kerala** [1994 (1) KLT SN.9 (C.No.9)] and **Karnal Singh v. State of Maharashtra** (AIR 1976 SC 1097). So under the circumstances, the courts below were perfectly justified in coming to the conclusion that the revision petitioner was found to be in

possession of the stolen articles. However, the court below did not come to the conclusion that the evidence is sufficient to convict him for the offence under sections 457 and 380 of the Indian Penal Code but convicted him for the offence under section 411 of the Indian Penal Code which is a lesser offence than the offences mentioned above. So the court below was perfectly justified in convicting the revision petitioner for the offence under section 411 of the Indian Penal Code invoking the presumption available under explanation (a) to section 114 of the Indian Penal Code and the concurrent findings of the court below on this aspect do not call for any interference.

13. As far as the sentence is concerned, the court below sentenced him to undergo rigorous imprisonment for one year and this was confirmed by the appellate court. It is seen from the records that the revision petitioner was in remand for four months and 12 days. Having found that he is not guilty for the offences under sections 457 and 380 of the Indian Code but found guilty under section 411 of the Indian Penal Code which is a lesser offence than the offence under section 380 of the Indian Penal Code, this Court feels that sentence can be confined to period of detention already undergone by him

namely 4 months and 12 days. So the sentence is modified as follows:

The sentence is confined to period of detention already undergone by him namely four months and 12 days.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of. If the revision petitioner is in jail in connection with this case, he is directed to be released forthwith if his custody is not required in connection with any other case.

Office is directed to communicate this order to the concerned court and to the jail authorities immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

